



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer
Perkins Coie, LLP
700 Thirteenth Street NW, Suite 600
Washington, DC 20005

OCT 26 2016

RE: MUR 6959

Dear Mr. Bauer:

On September 1, 2015, the Federal Election Commission notified your client, the Democratic National Committee and Andrew Tobias in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 18, 2016, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that your client violated 52 U.S.C. § 30121(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Democratic National Committee and Andrew Tobias in his official capacity as treasurer
Cindy Nava

MUR 6959

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission alleging that the Democratic National Committee ("DNC") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by hiring Cindy Nava, a foreign national, as an intern that participated in the DNC's decision-making or management processes.¹

II. FACTUAL BACKGROUND

The Complaint's allegations are based on two news articles describing Nava's experiences as an undocumented immigrant living in the United States since childhood and the path that led her to a summer internship with the DNC in 2015.² According to the news articles, Nava's internship involved "helping the party organize ahead of a presidential election" and "collaborat[ing] on policies in order to help women, children, and Hispanic people."³ The news articles do not describe the substance of her work with any particularity. The Complaint alleges that because Nava apparently participated in the DNC's decision-making or management processes in violation of the Commission's regulations, the DNC violated the Act's prohibition

¹ In addition, the Complaint alleges that the DNC violated the Immigration and Nationality Act of 1965. Compl. at 8-10. That allegation is beyond the scope of the Commission's jurisdiction. See 52 U.S.C. § 30107(a).

² Compl. at 1-2; see *La Figura Del Dia: Cindy Nava*, EL NUEVO HERALD (June 9, 2015) (in Spanish); Arelis R. Hernandez, *Undocumented Immigrant Among Fellows Working for DNC*, WASH. POST (June 8, 2015).

³ Compl. at 1-2; *id.* at 2 n.2 (emphasis removed).

1 on foreign national contributions.⁴ The Complaint acknowledges, however, that the details of
2 her internship are “unknown,” and suggests that a Commission investigation might “shed light”
3 on her responsibilities.⁵ But the Complaint also appears to allege that the services Nava provided
4 to the DNC during her internship, regardless of their significance, constituted a prohibited
5 foreign national contribution to the DNC.⁶

6 In its Response, the DNC denies the allegations and asserts that Nava performed “clerical
7 duties” such as online research, reviewing social media pages, and translating documents, during
8 her internship, which lasted about one month during the summer of 2015.⁷ The Response
9 explains that Nava “provided her services without charge” to the committee, but received a
10 volunteer stipend from three individual donors in the amount of \$1,000 each.⁸ Attached to the
11 Response is a sworn affidavit from Lindsey Reynolds, chief operating officer of the DNC during
12 Nava’s internship. Reynolds avers that Nava performed clerical work and did not direct, control,
13 or participate in the decision-making or management processes of the DNC.⁹

14 III. LEGAL ANALYSIS

15 The Act defines a contribution as any gift, subscription, loan, advance, or deposit of
16 money or anything of value made by any person for the purpose of influencing any election for

⁴ *Id.* at 1-3, 10.

⁵ *Id.* at 1, 8.

⁶ *Id.* at 3.

⁷ DNC Resp. at 1. Nava did not submit a response.

⁸ *Id.* at 4. The DNC reported the volunteer stipend as an in-kind contribution from the third-party donors. See DNC 2015 April Monthly Rpt. at 179, 994, 1,839 (Apr. 20, 2015) (three \$1,000 in-kind contributions for “staff time”).

⁹ DNC Resp., Attach. ¶¶ 6-7 (“Reynolds Aff.”).

1 federal office.¹⁰ A contribution does not include the value of services provided without
2 compensation by any individual who volunteers on behalf of a candidate or political
3 committee.¹¹ However, the payment by any person for the personal services of another person
4 rendered without charge to a political committee is a contribution.¹²

5 A foreign national is an individual who is not a citizen of the United States or a national
6 of the United States and who is not lawfully admitted for permanent residence.¹³ The Act
7 prohibits a foreign national, directly or indirectly, from making a contribution or donation of
8 money or other thing of value in connection with a federal, state, or local election, or to a
9 committee of a political party.¹⁴ Correspondingly, the Act prohibits persons from soliciting,
10 accepting, or receiving a contribution or donation from a foreign national.¹⁵ In addition, the Act
11 prohibits a foreign national, directly or indirectly, from making an expenditure, independent
12 expenditure, or disbursement for an electioneering communication.¹⁶

13 The Commission's regulations also provide that a foreign national shall not "direct,
14 dictate, control, or directly or indirectly participate in the decision-making process of any . . .

¹⁰ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

¹¹ 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74. The Commission has applied the volunteer activity exception to services provided by a foreign national to a political committee. *See, e.g.,* Factual & Legal Analysis ("F&LA") at 6, MURs 5987, 5995, and 6015 (Hillary Clinton for President); Advisory Op. 2014-20 at 1-2 (Make Your Laws PAC); Advisory Op. 2007-22 at 3 (Hurysz); Advisory Op. 2004-26 at 2 (Weller); Advisory Op. 1987-25 at 2 (Otaola).

¹² 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54.

¹³ 52 U.S.C. § 30121(b)(2); 11 C.F.R. § 110.20(a)(3)(ii).

¹⁴ 52 U.S.C. § 30121(a)(1)(A), (B); 11 C.F.R. § 110.20(b), (c).

¹⁵ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹⁶ 52 U.S.C. § 30121(a)(1)(C); 11 C.F.R. § 110.20(e), (f).

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1 political committee . . . with regard to . . . election-related activities.”¹⁷ This prohibition includes
2 decisions concerning “the making of contributions, donations, expenditures, or disbursements”
3 and “the administration of a political committee.”¹⁸

4 Here, the Complaint does not sufficiently allege a violation of the Act’s prohibition
5 against foreign national contributions. First, the available information does not indicate that
6 Nava participated in the decision-making or management processes of the DNC. The Complaint
7 asserts that Nava participated in the DNC’s decision-making or management processes with
8 respect to election-related activities but does not provide any supporting facts. Moreover, the
9 sworn affidavit from the DNC’s chief operating officer states that, “[a]t no point has Ms. Nava
10 directed, controlled, or participated in the decision-making process of the DNC, or been involved
11 in managing the DNC,”¹⁹ and there is no information to the contrary.

12 Second, it does not appear that Nava made a contribution to the DNC in the form of
13 services she provided while working there as an intern. The Complaint argues that Nava’s work
14 as an intern “unquestionably and unambiguously” constituted “value under the empowering
15 statute as interpreted by the FEC regulations,” and that she made a contribution equal to the
16 market rate for the services she provided.²⁰ The Act and the Commission’s regulations make

¹⁷ 11 C.F.R. § 110.20(i). The Complaint describes the Commission’s regulation at 11 C.F.R. § 110.20(i) as prohibiting foreign nationals from “working at any meaningful capacity” or engaging in conduct that merely “influences the decision making process” of a political committee. Compl. at 3, 7 (emphasis added). However, the regulation does not impose such universal or near-universal restrictions on the participation of foreign nationals in a political committee’s operations.

¹⁸ *Id.* The Commission has advised that foreign nationals speaking at committee events, soliciting funds and support for a committee, and attending meetings to discuss committee events or political strategy do not constitute participation in the “decision-making processes” of a committee. See Advisory Op. 2004-26 (Weller) at 3; see also F&LA at 7-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President) (explaining that a foreign national recording artist’s efforts to promote a campaign fundraising event did not constitute participation in the “decision-making processes” of a committee).

¹⁹ Reynolds Aff. ¶ 6.

²⁰ Compl. at 3.

1 clear, however, that where an individual provides personal services to a committee and a third
2 party pays the individual to provide those services, it is the third party's payment — not the
3 individual's services — that constitutes a contribution to the committee.²¹ To the extent that
4 Nava received compensation for her work in the form of a volunteer stipend, those payments
5 appear to have been properly reported as permissible in-kind contributions to the DNC from
6 third-party donors.

7 In conclusion, the Commission finds no reason to believe that the Democratic National
8 Committee and Andrew Tobias in his official capacity as treasurer violated 52 U.S.C.
9 § 30121(a), and finds no reason to believe that Cindy Nava violated 52 U.S.C. § 30121(a).

²¹ See 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; *see also* Advisory Op. 1982-04 (Apodaca) at 2-3 (attributing contribution to the payor of compensation for personal services).